

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

Exemption No. 5424

In the matter of the petition of

Express Airlines One, Inc.

Regulatory Docket No. 26801

for an exemption from § 135.169(d)
of the Federal Aviation Regulations

GRANT OF EXEMPTION

By letters dated February 26, 1992, and March 2, 1992, Phil Bohan, Vice President of Maintenance, and Tom Kolesar, Chief Inspector, Express Airlines One Inc., 2934 Winchester, Memphis, Tennessee 38118, petitioned for exemption from § 135.169(d) of the Federal Aviation Regulations (FAR) to permit a 30-day extension in the compliance time for the retrofit of Class C cargo compartment liners in Saab Model SF340A airplanes. By letter dated December 21, 1990, Mr. William C. Keil, Director, Technical Services, Regional Airline Association (RAA), petitioned for exemption from §§ 121.314 and 135.169(d) of the FAR to permit up to a one year extension in the compliance time for the retrofit of Class C and D cargo compartment liners. The petition was on behalf of all affected operators and was partially granted in Exemption 5289. The time extension for the SF340 airplanes expires on March 20, 1992.

Section of the FAR affected:

Section 135.169(d), as amended by Amendment 135-31, requires, in part, that after March 20, 1991, all Class C and D cargo compartments greater than 200 cubic feet in volume, used on airplanes in air carrier, air taxi, and commercial service, have liners constructed of fiberglass or material satisfying the test requirements of § 25.855, as amended by Amendment 25-60, or, in the case of liners approved prior to March 20, 1989, aluminum. It must be noted that liners constructed of fiberglass, if not previously type certificated for use in the airplane model involved, must be shown to comply with the regulations incorporated by reference in the type certificate for that model.

ANM-92-019-E

Related Section of the FAR:

Section 25.855(a-1)(1), as amended by Amendment 25-60, incorporates a new flame penetration test using an oil burner. Unlike § 135.169(d) which permits the use of fiberglass or aluminum construction, § 25.855(a)(1) requires this test of all liner materials in Class C and D cargo compartments on affected airplanes, regardless of whether or not the material is fiberglass. These test standards are contained in Appendix F, Part III, of Part 25. Except to the extent it is incorporated by reference in § 135.169, this section applies only to transport category airplanes for which an application for type certificate is made after June 15, 1986.

The petitioner's supportive information is as follows:

"Express Airlines One, has 29 SAAB SF340A model aircraft that are affected under FAR 135.169D. We have followed a strict schedule since January of this year. As of this date, 3/02/91, we have completed 14 of 29 aircraft. This leaves 15 aircraft left to be completed in 18 days. As of March 2, 1992, we are taking two SAABs off the line and doubled our production. In doing so we have canceled revenue flights causing passenger distress. When March 20th comes around we feel there is a chance that a portion of our fleet could be grounded, causing more passenger distress."

"We feel that we could complete this FAR within 30 days after the March 20, 1992, deadline. We are on a 24 hour work schedule installing the cargo compartment panels. The advertised time of installation was 2 days per airplane. By working with our [Principal Maintenance Inspector] PMI, Conrad House, we have made some modifications to the liner and have come up with a safer and more reliable liner. By doing so it has extended the time 3 to 4 days for completion."

The FAA finds, for good cause, that action on this petition should not be delayed by publication and comment procedures for the following reasons: (1) a grant of exemption would not set a precedent in that this matter involves circumstances of this industry's efforts to achieve compliance prior to the deadline established by the regulation; and (2) delay in acting on the petition would be detrimental to the petitioner in that it could result in removal of aircraft from service. The FAA was first made aware of the extent of compliance problems with this regulation by means of petitions for exemption filed by the Air Transport Association and the Regional Airline Association in late 1990. Exemptions were granted to those organizations (on behalf of affected operators) with the understanding that service information would be forthcoming from the airframe manufacturers as needed to achieve compliance. The compliance deadlines, as stated in those exemptions, were based on the scheduled release dates of service information and the associated time required to implement the modifications.

The Federal Aviation Administration's analysis/summary is as follows:

The petitioner's request is limited to an extension of the compliance time, as already extended by Exemption 5289 granted to RAA.

In granting Exemption 5289, the FAA noted that the justification for the SF340 was based more strongly on the cost of compliance than for other models. While cost by itself is not a sufficient justification for granting an exemption, the cost of compliance with the regulation was considered at the time the regulation was promulgated, and the impact on operators was not considered to be significant. As noted by several operators, the manufacturer's kit for compliance exceeded the anticipated cost by a considerable margin, prompting some operators to seek alternate sources for the necessary modifications.

While not explicitly addressed in their petition, the FAA is aware that Express Airlines One initiated modifications based on an estimated airplane down-time of one day. Had this proved to be feasible, all 29 airplanes would have been modified within the time allowed by Exemption 5289. The modifications proved to be more time consuming than was anticipated, however, and three to four days were required to accomplish the necessary work. Consequently, the total time to bring the operator's fleet into compliance would be lengthened considerably. The FAA notes that once it became clear that the existing modification schedule would not be compatible with the requirements of Exemption 5289, the petitioner increased labor and modification capacity in an effort to achieve compliance. Even at the increased modification rate, however, it appears that all of the airplanes will not be in compliance on the specified date. The FAA considers that the petitioner has made a good faith effort to comply with the requirement, and that a 30-day extension of the compliance time would not adversely affect safety.

Other information as discussed in Exemption 5289 continues to be relevant to this petition. In particular, the cost of compliance and potential removal of airplanes from service were considered to be of minimal impact when the regulation was developed. The petitioner notes that approximately half of the airplanes have been modified as of the date of the petition. Based on the modification schedule that has been implemented, it appears that 75 percent of the airplanes should be modified by the required date.

In consideration of the foregoing, I find that a grant of exemption is in the public interest and will not affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in §§ 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), Express Airlines One, Inc. is hereby granted an exemption to permit operation, under the provisions of Part 135 of the FAR, of airplanes that do not comply with the provisions of § 135.169(d) of that part. The following limitations apply to this exemption:

1. This exemption is limited to Saab SF340 airplanes.
2. This exemption expires on April 19, 1992.

All other provisions of Exemption 5289, together with its conditions and limitations, remain the same and are applicable to this exemption.

Issued in Renton Washington, on March 20, 1992.

Darrell M. Pederson
Acting Manager,
Transport Airplane Directorate
Aircraft Certification Service

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